

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

William E. Martin,

Plaintiff,

v.

Case No. 2:18-cv-270

Zamvir Zariwala,

Judge Michael H. Watson

Defendants.

Chief Magistrate Judge Deavers

**OPINION AND ORDER**

William E. Martin ("Plaintiff") filed this action on March 27, 2018, and moved to proceed *in forma pauperis*. Mot., ECF No. 1. The Magistrate Judge issued a Report and Recommendation ("R&R") recommending that the Court dismiss most of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A but permit Plaintiff to proceed with his claims against Zamir Zariwala ("Defendant"). R&R, ECF No. 3. The Court adopted the R&R on October 4, 2019. ECF No. 9. Thereafter, Defendant moved to dismiss Plaintiff's Complaint on the basis that Plaintiff has had three prisoner civil rights cases dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim ("three strikes"). Mot. to Dismiss, ECF No. 13. Plaintiff opposed Defendant's motion. Resp., ECF No. 14.

On April 2, 2019, the Magistrate Judge issued a R&R recommending that Defendant's motion to dismiss be denied without prejudice because Plaintiff's

three strikes do not require outright dismissal of the lawsuit. R&R 5–6, ECF No.

15. Instead, the Magistrate Judge recommended that:

Plaintiff's *in forma pauperis* status be revoked[]; that Plaintiff be required to pay the entire \$400 fee required to commence this action (\$350 filing fee plus \$50 administrative fee) within thirty (30) days of an Order adopting this Report and Recommendation; and that Plaintiff be notified that his failure to pay the full fee within thirty (30) days will result in the dismissal of the action.

R&R 6–7, ECF No. 15.

The R&R also recommended that the Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the reasons provided in the R&R, any appeal of the Order adopting the R&R would not be taken in good faith and to therefore deny Plaintiff leave to appeal *in forma pauperis*. *Id.* at 7.

Finally, the R&R notified the parties of their right to file objections to the R&R pursuant to 28 U.S.C. § 636(b)(1). *Id.* The R&R advised the parties that the failure to object to the R&R within fourteen days would result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the decision of the District Court adopting the R&R. *Id.* The deadline for filing such objections has passed, and no objections were filed.

Having received no objections, the R&R is **ADOPTED**. Defendant's motion to dismiss is **DENIED WITHOUT PREJUDICE**. ECF No. 13. Plaintiff's *in forma pauperis* status is hereby **REVOKE**D.

Accordingly, Plaintiff is ORDERED to pay the entire \$400 fee required to commence this action (\$350 filing fee plus \$50 administrative fee) within thirty (30) days of this Order. Plaintiff is warned that his failure to pay the full filing fee within thirty (30) days will result in the dismissal of the action. Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the reasons provided in the R&R, any appeal of the Order adopting the R&R would not be taken in good faith and therefore DENIES Plaintiff leave to appeal *in forma pauperis*.

**IT IS SO ORDERED.**



MICHAEL H. WATSON  
**MICHAEL H. WATSON, JUDGE**  
**UNITED STATES DISTRICT COURT**